

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

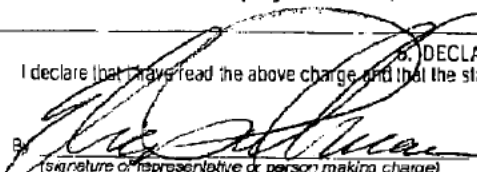
FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case
19-CA-90204Date Filed
9-27-12

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer American Federation of Teachers - Oregon	b. Tel. No. 503-906-3495
	c. Cell No.
d. Address (Street, city, state, and ZIP code) 7035 SW Hampton St. Tigard, OR 97223	f. Fax No. 503-906-3533
e. Employer Representative (b) (6), (b) (7)(C)	g. e-Mail (b) (6), (b) (7)(C)@aft-oregon.org
	h. Number of workers employed 11
i. Type of Establishment (factory, mine, wholesaler, etc.) Labor Union	j. Identify principal product or service Representation
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)3 and 8(a)5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)	
<p>Within the last six months, the above named employer, without bargaining with the union, unilaterally ended a practice of allowing employees to telecommute to work. On or around (b) (6), (b) (7)(C), 2012, the employer's representative, (b) (6), (b) (7)(C) denied the request of one of its employees, (b) (6), (b) (7)(C), to telecommute for a specific period of time (b) (6), (b) (7)(C). The employer took this action in retaliation for employees participation in protected activity.</p>	
3. Full name of party filing charge (if labor organization, give full name, including local name and number)	
United Employees Guild	
4a. Address (Street and number, city, state, and ZIP code) 7035 SW Hampton St. Tigard, OR 97223	4b. Tel. No. 503-906-3495
	4c. Cell No. 503-819-4086
	4d. Fax No.
	4e. e-Mail epattor@gmail.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) United Employees Guild, National Council of AFT Staff Unions	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
 By: Eben Pullman, Chief Steward (Signature of representative of person making charge) (Print/type name and title or office, if any)	
Address 7035 SW Hampton St. Tigard, OR 97223 Date 9/27/2012 (date)	
Tel. No. 503-906-3495 Office, if any, Cell No. 503-819-4086 Fax No. e-Mail epattor@gmail.com	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 36
601 SW 2ND AVE
STE 1910
PORTLAND, OR 97204-3170

Agency Website: www.nlrb.gov
Telephone: (503)326-3085
Fax: (503)326-5387

September 28, 2012

(b) (6), (b) (7)(C)

AFT - Oregon
7035 SW Hampton St.
Tigard, OR 97223-8313

Re: American Federation of Teachers - Oregon
Case 19-CA-090204

Dear (b) (6), (b) (7)(C):

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Lisa J. Dunn whose telephone number is (503)326-3171.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be

September 28, 2012

considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.


Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

RONALD K. HOOKS
Regional Director

By: 
LINDA L. DAVIDSON
Officer in Charge

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

American Federation of Teachers - Oregon

CASE NUMBER

19-CA-090204

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)**YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: _____**10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 36
601 SW 2ND AVE
STE 1910
PORTLAND, OR 97204-3170

Agency Website: www.nlr.gov
Telephone: (503)326-3085
Fax: (503)326-5387

September 28, 2012

Eben Pullman, Chief Steward
United Employees Guild
7035 SW Hampton St.
Tigard, OR 97223-8313

Re: American Federation of Teachers - Oregon
Case 19-CA-090204

Dear Mr. Pullman:

The charge that you filed in this case on September 27, 2012 has been docketed as case number 19-CA-090204. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge will be investigated by Field Attorney Lisa J. Dunn whose telephone number is (503)326-3171.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website www.nlr.gov. However, the Agency will continue to accept timely filed

September 28, 2012


paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlr.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

RONALD K. HOOKS
Regional Director

By: 
LINDA L. DAVIDSON
Officer in Charge

GENE MECHANIC
Attorney at Law

Of Counsel to
BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

Admitted to practice in Oregon, New York and Florida

210 SW MORRISON STREET, SUITE 500
PORTLAND, OREGON 97204-3149
PHONE: 503-384-2070
FAX: 503-894-5022
gene@mechaniclaw.com

November 21, 2012

Via Email and Regular Mail

Lisa J. Dunn
Attorney
NLRB Subregion 36, Portland
601 SW Second Avenue
ODS Tower, Suite 1910
Portland, Oregon 97204

Re: American Federation of Teachers - Oregon and
United Employees Guild, National Council of AFT Staff Unions
Case No. 19-CA-090204

Dear Ms. Dunn:

I am submitting this letter in support of AFT-Oregon's position that the above charge should be dismissed.

This charge has two elements. First, the charging party, United Employees Guild ("UEG"), asserts that AFT-Oregon ("AFT"), without bargaining with the union, unilaterally ended a practice of allowing employees to telecommute to work, in violation of Section 8(a)(5). Second, UEG contends that AFT (b) (6), (b) (7)(C) was denied (b) (6), (b) (7)(C) request to telecommute for a specified period of time (b) (6), (b) (7)(C) in retaliation for (b) (6), (b) (7)(C) or other employees' participation in protected activity, in violation of Sections 8(a)(1) and 8(a)(3). As the evidence submitted by AFT shows, neither of these allegations have merit.

1. AFT HAS NO ESTABLISHED PAST PRACTICE OF "TELECOMMUTING" WHICH WOULD PROVIDE EMPLOYEES WITH A REASONABLE EXPECTATION THAT THEY MAY WORK AT HOME DURING REGULAR BUSINESS HOURS REGARDLESS OF THE LENGTH OF TIME INVOLVED OR THEIR DUTIES.

From our conversations, I understand that UEG is arguing that AFT has had a broad "telecommuting practice" whereby employees have customarily been granted requests to work from home for extended periods of time and even without approval being needed. To begin with, this is an absurd allegation on its face since no employer which follows sound business practices would permit employees to unilaterally decide that they will telecommute for extended periods. In any event, AFT does not have nor has it had any "telecommuting" practice beyond the common employer practice of allowing an employee to work from home on a given day because of a particular need such home repair, caring for a sick child or transportation problems, in which case the employee will attempt to reach AFT (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) by telephone or email for (b) (6), (b) (7)(C) approval. (b) (6), (b) (7)(C), (b) (7)(D) Aff., Affidavits- of (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) There are occasions where (b) (6), (b) (7)(C) has disapproved such requests. For example, if an employee requests to work from home at a particular time when (b) (6), (b) (7)(C) needs that employee in the office, (b) (6), (b) (7)(C) will deny the request and ask the employee adjust his or her schedule to work in the office that day.¹

On two or three occasions over the last two decades, employees may have been given some opportunities to work limited hours from home during leave from work. For example, in 1995, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) may have discussed (b) (6), (b) (7)(C) doing some work from home during the leave but didn't recall if (b) (6), (b) (7)(C) did. (b) (6), (b) (7)(C) had also taken (b) (6), (b) (7)(C) leave in 1992 for about six weeks but (b) (6), (b) (7)(C) recalled that (b) (6), (b) (7)(C) did not perform any work from home. (b) (6), (b) (7)(C), (b) (7)(D) Aff., pp. 2-3.)

In 1993, (b) (6), (b) (7)(C) made an offer to (b) (6), (b) (7)(C) to do some work from home during (b) (6), (b) (7)(C) two month (b) (6), (b) (7)(C) leave because of lack of staff to cover (b) (6), (b) (7)(C) work but, as (b) (6), (b) (7)(C) remembers, (b) (6), (b) (7)(C) did not accept the offer and did not work from home during (b) (6), (b) (7)(C) two month leave.

(b) (6), (b) (7)(C) had a second leave (b) (6), (b) (7)(C) in 2007 which lasted for six months. All that time was designated as paid leave, with the exception of a mere six hours which was attributable to work time. (b) (6), (b) (7)(C) did not know whether (b) (6), (b) (7)(C) worked those six hours from home or the office. (b) (6), (b) (7)(C), (b) (7)(D) Aff., p. 3; (b) (6), (b) (7)(C) Timeoff Report submitted with (b) (6), (b) (7)(C), (b) (7)(D) Aff.)

UEG pursues a misplaced argument that a "telecommuting" arrangement between AFT and (b) (6), (b) (7)(C) in 2012 established a practice under which (b) (6), (b) (7)(C) telecommuting request should have been granted. In early 2012, (b) (6), (b) (7)(C) announced that (b) (6), (b) (7)(C) was quitting by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) to work through AFT's four day annual convention in April. (b) (6), (b) (7)(C) was AFT's (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) Because (b) (6), (b) (7)(C) had already partially moved from Oregon to (b) (6), (b) (7)(C) and said that (b) (6), (b) (7)(C) had commitments (b) (6), (b) (7)(C) over the next several months, (b) (6), (b) (7)(C) offered to let (b) (6), (b) (7)(C) work from (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) was not in Oregon, with AFT's (b) (6), (b) (7)(C) office available for (b) (6), (b) (7)(C) use. (b) (6), (b) (7)(C) still spent about half of (b) (6), (b) (7)(C) time in Oregon and, most significantly, when in Oregon (b) (6), (b) (7)(C) commuted to the AFT office like (b) (6), (b) (7)(C) had for the (b) (6), (b) (7)(C) or so years (b) (6), (b) (7)(C) had been employed with AFT. (b) (6), (b) (7)(C), (b) (7)(D) Aff., p. 2; (b) (6), (b) (7)(C), (b) (7)(D) Aff. p.2.) Accordingly, this arrangement has no relevance to UEG's alleged "telecommuting" practice.

It is important to recognize that a "past practice" becomes a condition of employment "premised on the presumed mutual agreement of the parties." Metro Mayaguez, Inc., 356 NLRB No. 150 (April 29, 2011). The practice "must occur with such regularity and frequency that employees could reasonably expect the 'practice' to continue to occur on a regular and consistent basis." Regence Heritage Nursing and Rehabilitation Center, 353 NLRB 1027 (2009). The practice must be a steady, defined practice; it cannot be continually changing. Allen Ritchey, Inc. and

¹ It should be noted that AFT does not use the term "telecommuting" or "telework," but for purposes of consistency we will use those terms here to mean working from home. Moreover, although the charge states that (b) (6), (b) (7)(C) made the request to "telecommute," as (b) (6), (b) (7)(C) testified and documents show, (b) (6), (b) (7)(C) did not do so directly but rather UEG made the request for (b) (6), (b) (7)(C) after (b) (6), (b) (7)(C) complained about AFT not paying for (b) (6), (b) (7)(C) health insurance for the entire six months (b) (6), (b) (7)(C) would be on leave.

Warehouse Union Local 6 International Longshore and Warehouse Union, AFL-CIO, 32-CA-18149, 2010 Westlaw 1020364, NLRB Division of Judges (February 4, 2010).

To the extent there has been any arguable "telecommuting" practice of AFT which has been implicitly agreed upon by the employer and union and has occurred in such regularity and frequency that employees could reasonably expect the practice to continue, it has been limited to the informal practice of employees being permitted to work from home for a day or two when a personal need arises. There is insufficient evidence that a regular and frequent practice has existed which would have given UEG and (b) (6), (b) (7)(C) a reasonable expectation that (b) (6), (b) (7)(C) would be allowed to work from home for the last three months of (b) (6), (b) (7)(C) six month leave performing (b) (6), (b) (7)(C) full-time duties during Oregon's Legislative session (b) (6), (b) (7)(C) during regular business hours.

Moreover, UEG must present evidence that AFT implemented a change from an established past employment practice which is "material, substantial and significant." Berkshire Nursing Home, LLC and New York Health and Human Services Union, 1199 SEIU, 345 NLRB 220 (2005). Even assuming that AFT had an established past practice of "telecommuting," AFT's denial of UEG's request that (b) (6), (b) (7)(C) be allowed to telecommute was not a material and substantial change. To reiterate, there was no precedent for granting an employee's request to work full-time from home for three months under any circumstances.

Finally, UEG's "telecommuting" proposal during the parties' 2004 negotiations pulls the rug out from under their argument that AFT has a broad-based telecommuting practice. (b) (6), (b) (7)(C) Aff., p. 5.) In 2004, UEG proposed a Memorandum of Understanding as part of the labor agreement which set forth a procedure for "telecommuting." Specifically, their proposal stated that "the parties consider telecommuting to be a viable alternative work arrangement in cases where an individual's job assignment allows for such an arrangement...Telecommuting is a voluntary work alternative and may be appropriate for some employees in some jobs." UEG failed in its attempt to achieve a "telecommuting" policy in 2004 and, unable to achieve it since, is now seeking to use the NLRB as a vehicle to compel AFT to accept a telecommuting practice which does not currently exist. (b) (6), (b) (7)(C), (b) (7)(D) Aff., p 5.) Indeed, UEG's 2004 telecommuting proposal undercuts the practice it seeks to establish here since it recognizes the Employer's need to have considerable discretion in determining whether a given employee's request to telecommute should be granted.

2. UEG'S REQUEST FOR (b) (6), (b) (7)(C) TO WORK FULL-TIME FROM HOME FOR THE LAST THREE MONTHS OF (b) (6), (b) (7)(C) LEAVE SO (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) WAS DENIED FOR BUSINESS REASONS, NOT IN RETALIATION FOR EMPLOYEE'S PARTICIPATION IN PROTECTED ACTIVITY

UEG makes a baseless claim that its "telecommuting" request for (b) (6), (b) (7)(C) was denied in retaliation for (b) (6), (b) (7)(C) or other employees' participation in protected activity. You informed me that UEG asserts that the protected activity at issue was a letter critical of AFT management which UEG sent to AFT Executive Council members in July 2012, signed by 11 employees, one of whom was (b) (6), (b) (7)(C). According to UEG's warped analysis, that letter led to AFT to deny UEG telecommuting request for (b) (6), (b) (7)(C) request two months later. However, as shown by the

written communications between (b) (6), (b) (7)(C) UEG, and AFT, which were submitted with (b) (6), (b) (7)(C) affidavit, the course of events leading to AFT's denial of the request highlight the weakness of UEG's position.

On June 29, 2012, prior to issuance of the UEG letter to AFT's Executive Council, (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would be taking six months of (b) (6), (b) (7)(C) leave starting (b) (6), (b) (7)(C) 2012 and will return to work on Monday, (b) (6), (b) (7)(C) 2013. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) met on (b) (6), (b) (7)(C) 2012 to confirm the details of (b) (6), (b) (7)(C) request. (b) (6), (b) (7)(C) described their discussion in a memorandum to (b) (6), (b) (7)(C) dated (b) (6), (b) (7)(C) 2012. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) request for leave was approved from (b) (6), (b) (7)(C) 2012 to (b) (6), (b) (7)(C) 2013. (b) (6), (b) (7)(C) also provided (b) (6), (b) (7)(C) with an analysis of (b) (6), (b) (7)(C) unused sick leave and vacation days which would be applied to the leave and stated that (b) (6), (b) (7)(C) would continue on employer-paid health insurance until (b) (6), (b) (7)(C) 2012, at which time (b) (6), (b) (7)(C) would need to cover the cost of premiums (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) wished to stay on the insurance plan. UEG then came on the scene.

A meeting was held on (b) (6), (b) (7)(C) between UEG (b) (6), (b) (7)(C) UEG (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). Although there are some differing views on the discussion during that meeting, it is clear that UEG requested that employees be allowed to donate sick and/or vacation time to (b) (6), (b) (7)(C) for the month of (b) (6), (b) (7)(C) to the extent that (b) (6), (b) (7)(C) needed such time to qualify for employer-paid health insurance. UEG also asked that (b) (6), (b) (7)(C) be allowed to work from home during the remaining three months of (b) (6), (b) (7)(C) leave so (b) (6), (b) (7)(C) could remain eligible for employer-paid health insurance, although there appears to be a dispute over whether UEG said that (b) (6), (b) (7)(C) would work full-time or part-time. In any event, AFT voluntarily agreed to extend employer-paid health insurance for (b) (6), (b) (7)(C) through (b) (6), (b) (7)(C) 2012 but denied the request that (b) (6), (b) (7)(C) be allowed to work from home for the months of (b) (6), (b) (7)(C) 2013. (b) (6), (b) (7)(C) Aff., pp. 3-4.)

Subsequent emails between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) are instructive. On (b) (6), (b) (7)(C) 2012, without pointing to any evidence supporting (b) (6), (b) (7)(C) contention, (b) (6), (b) (7)(C) accuses (b) (6), (b) (7)(C) of denying (b) (6), (b) (7)(C) request to work full-time from home for three months to accommodate (b) (6), (b) (7)(C) in retaliation for (b) (6), (b) (7)(C) and other employees engaging in protected activity and informs (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would be filing a ULP charge. In response, (b) (6), (b) (7)(C) responded that same day, emphasizing that:

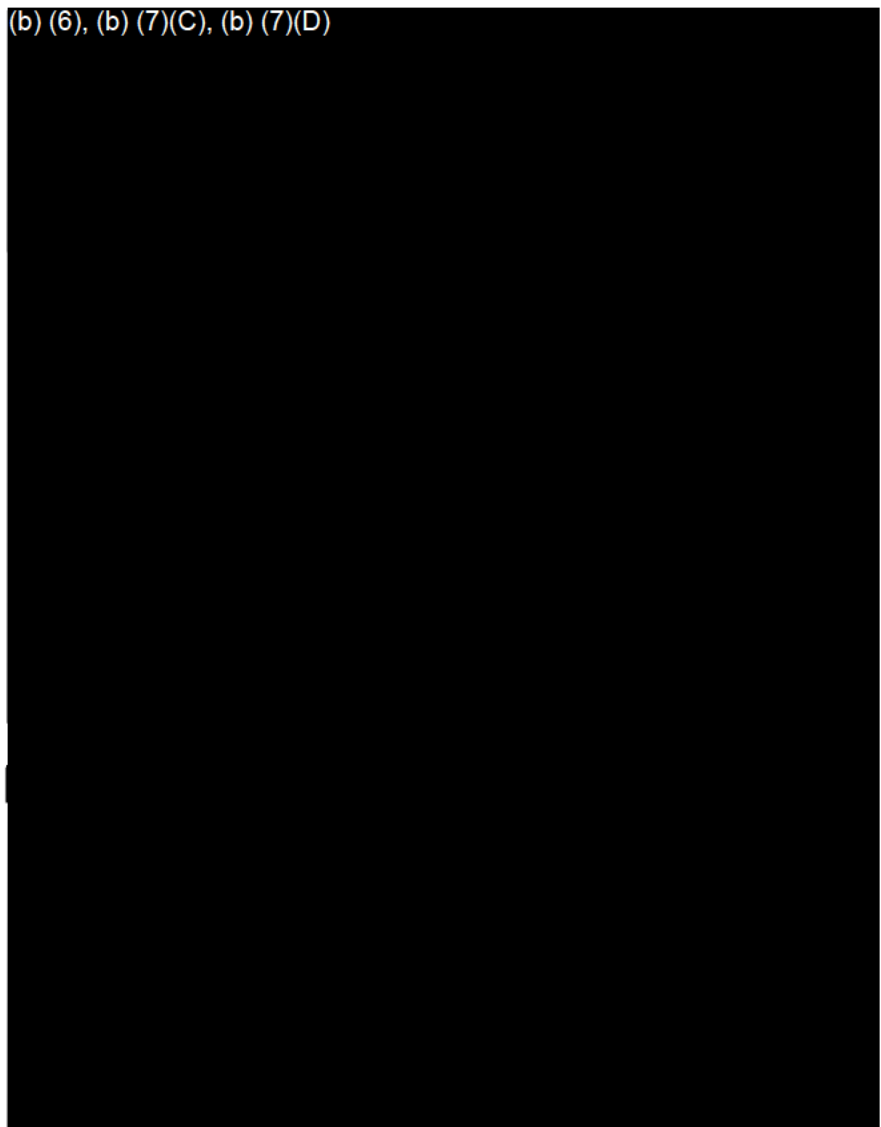
The employer's denial of this request has nothing to do with (b) (6), (b) (7)(C) or anyone else engaging in protected activity. Please remember that UEG proposed in negotiations for the 2004 contract an extensive telecommuting provision for the contract and that it was unsuccessful in achieving it.

In short, there is no evidence connecting UEG's July 2012 letter to the Executive Council, or any arguably protected activity for that matter, to AFT's decision to deny UEG's (b) (6), (b) (7)(C) 2012 request that (b) (6), (b) (7)(C) be allowed to work from home for three months. To the contrary, based on the undisputed evidence, UEG charge must be rejected. Showing its good faith, after the Executive Council letter was distributed, AFT granted (b) (6), (b) (7)(C) request for six months of (b) (6), (b) (7)(C) leave, the only request made at the time, and later voluntarily agreed to provide (b) (6), (b) (7)(C)

with an additional month of employer paid health insurance which was not required by the labor agreement or otherwise.

In their affidavits, (b) (6), (b) (7)(C), (b) (7)(D) described the reasoning for the denial of UEG's telecommuting request for (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) said it was based on AFT's business needs. (b) (6), (b) (7)(C), (b) (7)(D) Aff., p. 5.) (b) (6), (b) (7)(C) took into account the opinions of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in making a decision. According to (b) (6), (b) (7)(C) who is (b) (6), (b) (7)(C) "was adamant that (b) (6), (b) (7)(C) position was not amenable for work at home, because things happen at the spur of the moment and (b) (6), (b) (7)(C) needed (b) (6), (b) (7)(C) to be available at a moment's notice, including helping to draft testimony and find/organize witnesses." (b) (6), (b) (7)(C), (b) (7)(D) Aff., pp. 4-5.) (b) (6), (b) (7)(C) who is (b) (6), (b) (7)(C) employee with no axe to grind against UEG, emphasized that (b) (6), (b) (7)(C) was very adamant with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that they not grant (b) (6), (b) (7)(C) telecommute request." More specifically, (b) (6), (b) (7)(C) testified:

(b) (6), (b) (7)(C), (b) (7)(D)



(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) Aff., pp. 4-5.

(b) (6), (b) (7)(C) also testified that AFT's denial of UEG's telecommute request for (b) (6), (b) (7)(C) had nothing to do with any concerted activity that (b) (6), (b) (7)(C) may or may not have engaged in but (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) Aff. p. 5.)

In sum, a complaint should not be issued based on UEG's wild speculation and a rejection of the sworn statements of (b) (6), (b) (7)(C), (b) (7)(D) that protected activity had nothing to do with its decision to deny UEG's telecommuting request. The Region would not prevail on a complaint that UEG's telecommuting request for (b) (6), (b) (7)(C) was denied by AFT in retaliation for any protected activity.

3. CONCLUSION

For the reasons stated above, AFT respectfully requests that the above charge be dismissed in all respects.

Very truly yours,



Gene Mechanic

GM: (b) (6), (b) (7)(C)

cc: (b) (6), (b) (7)(C) (via email)
(b) (6), (b) (7)(C) (via email)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 36
601 SW 2ND AVE
STE 1910
PORTLAND, OR 97204-3170

Agency Website: www.nlrb.gov
Telephone: (503)326-3085
Fax: (503)326-5387

November 29, 2012

Gene Mechanic, Esq.
Mechanic Law Firm
210 SW Morrison St., Ste. 500
Portland, OR 97204-3149


Re: American Federation of Teachers - Oregon
Case 19-CA-090204

Dear Mr. Mechanic:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

RONALD K. HOOKS
Regional Director

By: 
LINDA L. DAVIDSON
Officer in Charge

cc: (b) (6), (b) (7)(C)
American Federation of
Teachers - Oregon
7035 SW Hampton St.
Tigard, OR 97223-8313

Eben Pullman, Chief Steward
United Employees Guild
7035 SW Hampton St.
Tigard, OR 97223-8313